

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1780 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ALPA MARKETING ENTERPRISE THROUGH ITS TRUSTEES

Versus

MAHIPATSINHJI

Appearance:

Mr. M.B.Gandhi for Petitioners
MR JN JADEJA for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 17/08/2000

ORAL JUDGEMENT

This Revision Application arises out of
the order dated 20.4.1995 in Summary Suit no. 826 of
1994 passed by the Judge, City Civil Court, Ahmedabad
whereby unconditional leave to defend has been granted to
the defendant.

2. The petitioners filed the aforesaid suit for the recovery of Rs. 19,81,510.32 ps. with interest at the rate of 24% per annum from the date of the notice till the date of the suit, being Rs. 41,693.15 ps. plus Rs.550/- being the notice charges, totalling Rs. 20,23,753.47 ps. with costs and interest at the rate of 24% per annum thereon from the date of the suit till its realisation on the averments that the petitioners/plaintiffs are carrying on business of washing powder, detergent cake, bath soap, toilet soap, Shikakai, Spray Dried powder, liquid blue etc. under the name and style of "Nirma". The defendant no.1 is a partnership firm and defendant nos. 2 to 7 are its partners. The defendant no.1 had purchased various goods from the plaintiff on different dates worth of specific amount. Bills thereof were given to the defendant on each occasion. The amount given by the defendant was debited in the defendant's account. The defendant has paid Rs. 1,37,98,099/- from 5th April, 1992 to 10th December, 1993 by drafts at Ahmedabad which have been credited in the defendants' account by the plaintiffs in their books of account. The amount of Rs.19,81,510.32 ps. remained due and payable by the defendants to the plaintiffs. The plaintiffs therefore gave a notice to the defendants by registered post on 28th December, 1993. Still however, the defendants have not paid the amount due. Hence, they are entitled to recover the amount with interest at the rate of 24% per annum.

3. The defendants have not paid the amount in time as per terms and conditions of the bill.

4. The defendants filed application for leave to defend the suit exh.16 contending that the plaintiff's suit against the defendants is not maintainable. It does not disclose commercial transactions between the parties as the alleged transaction is by nature of agency between the parties. No cause of action has arisen in favour of the plaintiffs to institute the suit against defendant no.1 who had retired from the defendant no.1 firm. He has also given information to Ambalal Shankerbhai Patel-plaintiff no. 5 who had initialled in the margin of handwritten letter dated 11.1.94 personally given to Ambubhai alongwith copy of the separation-deed duly attested in which it was clearly mentioned that retiring partners viz. defendant nos. 2 and 3 had no liability in accounts of partnership business upto the date of retirement. Thus, it was made clear to the plaintiffs that the defendant nos. 2 and 3 have no claim on any past, present and future assets nor shall they be required to bear or meet any defendant's

liabilities of the defendant no.1 partnership firm. It is clear that on 3.6.93, an amount of Rs. 1,41,000/- was shown on the credit balance at the defendant no.1 firm and as such, the defendant nos. 2 and 3 who have retired on 3.6.93 had no liability whatsoever to make the payment to the plaintiff's firm or its partners.

5. The trial court after going through the material on record, came to the conclusion that the transactions took place between plaintiffs and defendant no.1 from 12.4.93 to 11.11.93 and 9.6.93 to 21.10.1993. The total amount found due was Rs. 1,57,79,609.32 ps. out of which the defendants have already paid an amount of Rs.1,37,98,099/- from 5.4.93 to 10.11.93 by drafts at Ahmedabad. The trial court also came to the conclusion that huge amount was transacted between the parties and there was no reason to dispute the balance amount of Rs. 19,81,510.32 ps., but it must have remained unpaid due to some accounting dispute between the parties which according to the defendant no.1 is a different exit as dispute of agency account between the plaintiffs' firm and defendant no.1's firm. The trial court therefore, granted unconditional leave to defend the suit.

6. None appears on behalf of the respondents-defendants. The learned advocate for the petitioners submitted that the trial court has not recorded any reason that there is a triable issue in the matter. Moreover, on the other hand, the trial court has found that there was no reason to dispute the balance amount of Rs.19,81,510.00 due to be paid to the plaintiffs by the defendants and the only reason has been considered is that it must have been remained unpaid due to some accounting dispute between the parties. According to the learned counsel, the trial court has committed an error in holding that the remaining part has not been paid due to some accounting disputes between the parties. When the defendants have disputed the entire transaction and the amount and the trial court has found outstanding dues of Rs. 1,57,79,609.00, out of which the defendants have already paid an amount of Rs.1,37,98,099/- by drafts. Therefore, there is no question that there was some dispute and if there was any dispute that ought to have been considered. The trial court has erred in holding that there was some dispute of agency account between the parties without recording any reason or finding material in this respect.

7. I have considered the contentions of the learned advocate for the petitioners and gone through the papers on record. It appears that there was a

transaction between the parties and in that transaction, the defendants had already paid an amount of Rs. 1,37,98,099/- by drafts and the remaining outstanding amount of Rs.19,81,510.32 ps. has not been paid and that is outstanding to be paid by the defendants to the plaintiffs. If the court comes to the conclusion that the said amount remained to be unpaid only due to some accounting dispute, then that dispute has not been raised by the defendants and hence the trial court was not justified to infer the non-payment of balance due to some accounting dispute. As such, without finding any triable issue, the court below was not justified at all in granting unconditional leave to defend the suit. Therefore, this Civil Revision Application is allowed. The impugned order dated 20th April, 1995 is set aside and the defendants are granted leave to defend the suit on condition to deposit Rs. 4 lacs in the trial court within two months from the date of this order. The trial court is directed to proceed with the suit in accordance with law. Rule is made absolute with no order as to costs.

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